



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 21, 1995

Ms. Laura S. Portwood
Senior Assistant City Attorney
Legal Department
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR95-1265

Dear Ms. Portwood:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 33401.

The City of Houston (the "city") received several requests concerning certain employees in the Public Works and Engineering Department, the Office of Councilwoman Helen Huey, the Civic Center Department, the Mayor's Office, the Office of Councilman Joe Roach, the Department of Finance and Administration, and the City Attorney's Office.¹ Specifically, the requestor seeks the name and job title of those employees who have been provided a cellular phone by the city; the phone numbers of such cellular phones; and the billing statements for such cellular phones covering the 1994 calendar year and January, February, and March of 1995.² You state that the city is releasing some of the requested information. You claim, however, that portions of the remaining information are excepted under sections 552.024, 552.101, and 552.117 of the Government Code.

¹We note that the Municipal Courts/Administration Department was also included in the request for information. Court records, however, are not subject to the Open Records Act. Gov't Code § 552.003(b).

²You state that the requestor has agreed to review the list of Public Works and Engineering Department employees and identify the specific employees whose billing statements he wishes to review.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." For information to be protected from public disclosure under the common-law right of privacy as section 552.101 incorporates it, the information must be (1) highly intimate or embarrassing the publication of which would be highly objectionable to a reasonable person and (2) of no legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977); Open Records Decision No. 142 (1976) at 4 (construing former V.T.C.S. art. 6252-17a, § 3(a)(1)).

You claim that the billing statements are excepted from disclosure under section 552.101 "to the extent that they are for phones paid for entirely by the individual or to the extent that personal calls placed on a City phone are reimbursed by the individual." You further claim that these numbers are of no legitimate public concern. Home addresses and phone numbers are not "intimate" information; and therefore, no balancing is necessary; this information is not protected as to applicants, probationers, or private citizens. Open Records Decision Nos. 478 (1987), 455 (1987). The conclusion this office reached in Open Records Letter No. 94-730 (1994) is consistent with our conclusion here; the decision in Open Records Letter No. 94-730 (1994) concerned the employee's personal cellular telephone and telephone bills. Accordingly, you may not withhold the requested information under section 552.101 of the Government Code.

You also argue that the fact that the telephone call was reimbursed by an employee affects whether the call may be protected under section 552.101 of the Government Code. We disagree. The cellular telephone records are public information. See Gov't Code § 552.021(a). The records may be withheld only if they are excepted by one of the sections in subchapter C. Open Records Decision No. 549 (1990) (virtually all information in physical possession of governmental body is subject to Open Records Act, and whether it is excepted from public disclosure depends upon whether it comes within exception listed under subch. C); see Open Records Decision Nos. 565 (1990), 535 (1989), 526 (1989), 522 (1989), 517 (1989), 514 (1988), 509 (1988), 508 (1988), 506 (1988), 502 (1988) (all information held by governmental body under Open Records Act is open unless it is excepted from disclosure by one or more of Open Records Act's specific exceptions). Whether a specific telephone call was reimbursed by an employee does not change the requirement that the information must be released unless it comports with one of the act's exceptions.

You claim that sections 552.024 and 552.117 except certain numbers from public disclosure and have submitted a representative sample redacted accordingly. We agree with your markings.

In pertinent part, section 552.117 excepts from disclosure the home addresses and telephone numbers of all peace officers, as defined by article 2.12 of the Code of Criminal Procedure, and the home addresses and telephone numbers of all current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Therefore, section 552.117 requires you to withhold any home telephone number of a peace officer that appears in the requested documents. In addition, section 552.117 requires you to withhold any home telephone number of an official, employee, or former employee who requested that this information be kept confidential under section 552.024. See Open Records Decision Nos. 622 (1994), 455 (1987). You may not, however, withhold the home telephone number of an official or employee who made the request for confidentiality under section 552.024 after this request for the documents was made. Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 (1989) at 5.³

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Margaret A. Roll
Assistant Attorney General
Open Records Division

MAR/LBC/rho

Ref: ID# 33401

Enclosures: Submitted documents

³As the requestor does not seek the cellular telephone numbers for "employees who pay directly for the purchase of, installation of, and billing to phones installed in their private vehicles," we do not address these records in this ruling.

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(w/o enclosures)